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WORLD CONFERENCE AGAINST RACISM,
RACIAL DISCRIMINATION, XENOPHOBIA
AND RELATED INTOLERANCE

Durban, 31 August - 7 September 2001
Item 9 of the provisional agenda

CONFERENCE THEMES

NGO contributions

Contribution* submitted by Human Rights Watch

The secretariat has received the following written statement, which is transmitted to the World Conference.

* This contribution is issued, unedited, as received from the submitting non-governmental organization.

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ENG

Human Rights Watch is addressing the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance on five principal areas. These are caste discrimination, the protection of migrants and refugees, discrimination in the denial of citizenship rights, discrimination in criminal justice and public administration, and the matter of reparations.

Caste Discrimination

In much of Asia, parts of Africa, and in the South Asian diaspora racism has become coterminous with caste in the definition and exclusion of groups distinguished by their descent. Over 250 million people worldwide suffer under a hidden apartheid of segregation, modern-day slavery, and other extreme forms of discrimination because they were born into a marginalized caste. Despite formal protections in law, discriminatory treatment remains endemic and discriminatory societal norms continue to be reinforced by governments. Caste discrimination imposes enormous obstacles to the enjoyment of civil and political rights and the realization of economic, social, and cultural rights.

Caste discrimination has been a shameful secret for too long—and some of the governments which most need international support to fight caste discrimination have been most strident in demanding this issue be excluded from the World Conference. Express recognition is required by the World Conference that caste-based discrimination blights the lives of hundreds of millions—and that international programs are required to remedy its consequences and to establish practical measures to facilitate its abolition.

Migrants and Refugees

Trends in population movements and an increasingly international labor force make it particularly urgent to address racism as a factor in migration and refugee flows and in its relation to conflict. Women migrants suffer particularly, in trafficking and forced prostitution, in the lack of protection in the work place, and in constraints on family life imposed by migration and the specter of statelessness.

Racism is both a cause and a result of forced displacement, and a barrier to its solution. Refugees and asylum seekers who flee situations of racial and ethnic discrimination and violence also increasingly confront such hostility in their countries of refuge. Over the past decade, there has been a global trend of xenophobia and growing hostility towards refugees and asylum seekers. This trend is most notable in industrialized countries where a barrage of new, restrictive policies have targeted asylum seekers, refugees, and migrants over the past decade. Even traditionally generous host countries in the developing world, often over-burdened with their own social and economic problems, have become increasingly reluctant to host large refugee populations.

The World Conference should call for the reinforcement of the international refugee protection regime and for new standards and mechanism to extend protection to refugees and migrants who face racism, xenophobia, and related intolerance.

Nationality and Citizenship Rights

People face racial discrimination through the summary revocation of citizenship; through the redrawing of the terms of nationality in the upheavals of state succession; through the historical refusal to recognize national minorities as citizens in their own countries; and through gender discrimination in the transmission of nationality from parents to a child.

Whole populations may be denied nationality in their own countries—or be stripped of their citizenship—because of their race or ethnicity. Some have been present in a country for generations, often predating their country's independence; others are indigenous peoples. Discrimination on the basis of gender often combines with racism as a discriminatory factor in states that define citizenship in terms of racial or national "purity." When citizenship is restricted to the children of male nationals, female citizens are discouraged from marrying men of a different race or nationality because their children would be denied citizenship.

Even as economic globalization encourages the interdependence of states and free movement across borders, the international costs of discrimination in the determination of citizenship have gone largely unrecognized. Disputes over nationality have generated refugee crises, where particular ethnic groups have been arbitrarily stripped of their citizenship prior to their forced expulsion. The World Conference Against Racism offers an opportunity to place the issue of nationality and statelessness, and the human rights abuses arising from it, firmly on the agenda of the international community.

Criminal Justice

Criminal justice has an enormous potential for unjustified discriminatory effect. At the national or local level discrimination can arise from practices with racist intent, like racial profiling, in which an individual's presumed race is the determining factor in placing them under suspicion. The mechanisms of criminal justice can equally result in unjustified discriminatory effect where there is no clear racist intent. Discriminatory impact can be shown in patterns of police abuse, arbitrary arrest, incarceration, prosecution, and sentencing. The de facto denial of remedies to particular groups within a criminal justice system or the disparate effect of de jure disenfranchisement of members of a particular group may be evidence of unjustified racial discrimination regardless of the intent of lawmakers and public officials.

CERD obliges states "to nullify any law or practice *which has the effect* of creating or perpetuating racial discrimination." This notwithstanding, early drafts of the World Conference program of action call for measures to address discrimination in the administration of justice only where discriminatory intent can be discerned. The World Conference should recommend measures to identify and to remedy the racist effect of law or practice even in the absence of racist intent.

Public Administration

The unjustified discriminatory effect of public policy and administrative practice can effectively prevent the enjoyment of fundamental human rights even in the absence of overt discriminatory intent. This is often most evident in the administration of social services, education, and public housing to exclude or marginalize members of particular groups. It can also apply to restrictions of the freedom of movement and the right to live in a particular area of one's own country. Access to education without discrimination should be a particular focus of the World Conference.

Compensation and Reparations

Governments that practice or tolerate racial discrimination must acknowledge and end the violation of human rights and compensate the victims. The descendants of a victim of human rights abuse should also be able to pursue claims of reparations. That is, the right to reparations should not be extinguished with the death of the victim but can be pursued by his or her heirs. Reparations should consist of compensation, acknowledgment of past abuses, an end to ongoing abuses, and, as much as possible, restoration of the state of affairs that would have prevailed had there been no abuses. As time passes, the need to prioritize claims to reparations grows.

Extraordinarily severe forms of discrimination such as slavery, particular aspects of colonialism, and such official racist practices as apartheid and other forms of segregation have had lasting consequences that are of particular concern to this World Conference. Reparations for historical abuses are most urgent as a remedy for the contemporary effects of past abuse: in particular, for people who today personally suffer the greatest effects of past human rights violations through continuing economic or social deprivation (while not neglecting continued violations of civil and political rights). Most in need are those whose social and economic deprivation is greatest. The remedy to which these groups should be entitled would be an end to the violation of economic and social rights that derives from past racist practices.

The World Conference should consider proposals for reparations to the descendants of past victims with a view to rectifying the social and economic processes that underlie today's victims' continuing marginalization.

Conclusion

The World Conference should:

- Put caste discrimination squarely on the agenda, with appropriate language in the conference declaration and program of action of the conference—to jump-start an international program of action to monitor, remedy, and ultimately eliminate caste discrimination world wide.
- Recognize the problem of denial or deprivation of citizenship on racial and related grounds, and the intersection of race and gender in discriminatory citizenship laws and practices; and to encourage CERD, CEDAW, and the Committee on the Rights of the Child to address this issue.

- Defend and reinforce the international refugee protection regime; and to improve international monitoring in order to detect and remedy discriminatory treatment of migrants and refugees.
- Encourage ratification of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- Encourage states to systematically collect and report information on law enforcement and the administration of justice, with a view to identifying and remedying any discriminatory purpose or effect; and to monitor the administration of public affairs in such areas as education, health care, housing, and the enforcement of labor rights with a view to identifying and remedying any discriminatory purpose or effect in public policy and programs.
- The World Conference should agree upon a program of action covering the full range of remedies, including reparations, for violations of the rights to be free of racial discrimination and related intolerance.